

ORIGINALLY FILED AS

**ECF Doc. 138-10**

(Exhibit 67 to Declaration of Kevin J.B. O'Malley in Opposition to Defendants'  
Motion for Partial Summary Judgment executed on June 22, 2018)

Melbourne, 28 November 2013

To Whom it may concern,

Written declaration by Arturo Osorio on the Brightstar  
Germany inventory loss incident at Getgoods warehouse.

Below please find my recollection of the events:

Thursday 26<sup>th</sup> of September

- We had a schedule meeting with Rene Schuster the CEO of O2 Germany in his HQ in Munich. To my surprise, Frank Kochan Chairman of GetGoods (GG) was also present at the meeting. I had never met Frank or anyone from GG before.
- Rene the CEO of O2 asked me to support GetGoods because they were a good company that was growing in Germany and wanted to expand into the rest of Europe. He also mentioned (confirmed by Frank too) that Getgoods was looking for new investors and maybe we should consider investing in the company. I offered my assistance to introduce them to a few venture capital firms that liked to invest in ecommerce companies. I asked Frank for their financial or a prospectus from the company and he agreed to send them to me, he never did.
- At the end of the meeting, Frank the chairman of Getgoods asked me if he could postpone the stock take that was schedule for Monday 30th of September, he said that his team was busy with Q3 closing and that it will be very helpful if we postpone the stock take until October. I agreed to postpone the stock take, especially after the CEO of O2 asked me to help them.
- When I returned to Australia I told my team that I didn't like the fact that this was the second time they postpone the stock take and that I wanted our auditors present in the new agreed October stock take.

Wednesday October 30<sup>th</sup>

- We received a notification from Get Goods informing us that they couldn't do the stock take previously agreed for Thursday October 31<sup>st</sup>. They claimed that it was a long weekend and that their employees had complained to the local authorities and they received a writing notice informing them they could not do it on a public holiday.
- Since this was the third time they had cancelled the stock take (first time in August, second in September) I became suspicious of their rationale for canceling, so I asked both Axel and Klaus to drive to the GG, I also asked both Mark and Turgut to go with Klaus and Axel. Both Turgut and Mark were in Germany for the scheduled stock take so they were ready.
- Axel, Klaus, Turgut and Mark were granted access to the GG warehouse at 9pm for about 1 ½ hours. Based on their photos, videos and statements, they counted approx. 100 pallets in one part of the warehouse and 70 other pallets in another part of the warehouse. They were all covered in black tape and stored in racks 3 and 4 levels high. They did some random sample tests of approx 20 pallets and they saw our Samsung stock, they opened the pallets and the boxes of the samples selected and then they proceeded to calculate how much stock was there. Based on the number of pallets, cartons per pallet, devices per cartons, they came up with an approximation of 193,000 devices and a value of EU52M. This was consistent with our inventory reports.
- Both Con and I stayed up all night in Australia and receiving live feeds from Mark and Turgut, we had a number of calls with them while they were in the GG warehouse. After seeing our

EX # 121

A. OSORIO

September 15, 2016

Reporter: NANCY GILBERT  
RPR RMR RDR GRR FPR

AJG0000920

CONFIDENTIAL PER PROTECTIVE ORDER

stock, we asked to do the full stock take the following day but GG didn't agree and they suggested Friday 8<sup>th</sup> of November, we agreed.

- I also informed our internal auditors, CEO and legal counsel what happened

Thursday November 7<sup>th</sup>

- While I was in Miami, between 1:30pm to 2:00pm EST, I received a call from Axel saying that he had received a call from GG CEO informing him that they have sold our stock without our authorization.
- Axel requested a call with their board, CFO, Chairman and CEO. He was again informed by everyone on the line that they had sold our inventory without our authorization and that we had to work with them if we want to collect our money. They told him that they were working with a potential investor who was going to invest money in GG therefore we had to wait until they closed this transaction so we can collect our money. They also told him that if we force the company into insolvency we won't collect any money.
- Axel also told me that he invited an attorney to join him on the call with GG, this same attorney also joined us when we went to Getgoods the following day.
- I told Axel not to do anything else and to meet me in GG the following day. I stopped everything I was doing and I informed our CEO, head of legal and internal auditors of the events and that I was heading to Berlin.
- I contacted Bela and Max and I explained the events to them and I asked them to joined me in Berlin.
- I called Norman Bean our APAC&MEA CFO and Con and I also informed them of the events, I asked them to contact both Turgut and Mark who again were in Germany to conduct the scheduled stock take, I wanted them to also come to GG.
- Just before I boarded my flight to Berlin at 7pm I received an email from Axel with the minutes of his call with the GG board. The email was in German so I didn't know what it said, I forwarded the email to Bela so he could translate the email
- I boarded my flight to Berlin

Friday November 8<sup>th</sup> (morning)

- When I landed in Berlin I received the translated version of the minutes of the call, it was basically the same (in more detail) that Axel had already told me. I forwarded the email to Catherine and Marcelo
- While in transit in London, Max and I contacted K&L UK office to ask them if they could assist us in Berlin. Benjamin from the K&L UK office put us in contact with their offices in Berlin.
- Max contacted the K&L office in Berlin and they agreed to send two attorneys to help us.
- I told Axel and Klaus to meet us outside of the GG offices, I told Mark and Turgut to go direct to the GG warehouse (different location) and wait outside.
- I met Bela, Max and the K&L attorneys (Uwe and Thomas) at the airport and we drove together to GG
- At GG parking lot we met Axel, Klaus and two attorneys that according to Axel represented Brightstar. I told him that the only attorneys that represented Brightstar were Thomas and Uwe from K&L
- I told Mark and Turgut to request access to the warehouse, in the meantime Max, Bela, Klaus, Axel, the 4 attorneys and I, went inside their offices and asked to see the CEO.

Friday November 8<sup>th</sup> (afternoon and evening)

- We were asked to go the third floor, to the executive board room. The CFO of GG as well as their legal counsel were waiting for us there, the CEO came in a few minutes later.
- Everyone introduced themselves and I explained to them that K&L are the only attorneys representing Brightstar.
- I asked the CEO if he could repeat what he told Axel the previous day. He proceeded to explain that they sold our inventory without our authorization and that they had been doing

this for some time. That the inventory that we saw on October 30<sup>th</sup> was only partially correct, that the inventory in the top racks was not Samsung but something else, that they made it look like Samsung. He also proceeded to explain that they were in the process of bringing a new investor and that the situation will be resolved because they will be able to pay anything that they had taken. He asked us to wait for a few weeks.

- I told him that we could not wait and that we wanted our stock now, I told him that we had two people in the warehouse and that we wanted to see our inventory. Someone called the warehouse and they gave access to both Turgut and Mark. A few minutes later I received confirmation from Mark that the warehouse was empty and that the 170 pallets they saw the previous week were all gone
- At this time I demanded to know where inventory was, otherwise I was going to notify the police and the insurance companies. I told the CEO that this was a criminal act and that they had stolen our inventory. He begged for time and said that he will resolve everything when the new investor comes in. I explained to him that we will not be part of any fraud and that we have an obligation to report this incident to the authorities as well as our insurance companies.
- When I asked the CFO and the legal counsel if they knew that this was going on, their response was that they only learned about it the previous day when the CEO told them that he had been selling our stock without our authorization.
- At this time I called Marcelo and Catherine and we agreed to give them two hours to come up with the inventory otherwise we will be calling the authorities.
- I asked to also talk to the chairman but I was told he was on vacation between Vietnam and Thailand and he could not be found.
- I asked the CFO about the integrity of their financial reports and the fact that very day they reported their Q3 earnings, reporting a 80+% growth in revenues, some profits (don't remember how much) and their stock went up 30%. He said that the information comes from their ERP and he only prepares the financials based on the data from the system. He again claimed that he didn't know anything and he only joined in August.
- The legal counsel asked us if we could only inform the insurance companies but not the authorities, he then offered us a letter signed by the CEO and the company admitting that they had committed a crime and taken our inventory in return if we didn't call the authorities.
- I started to pressure the CEO about our stock, I said I didn't believe they sold the stock and that we saw 170 pallets the week before. He again insisted that they staged the warehouse so it looked they had more inventory that they really had. He then repeated again that he had been selling our stock to generate cash flow for his company
- To demonstrate that they sold the stock they produced copies of invoices or the last week, I think the total was close to EU22m in sales in one week. We noticed on the invoices that they were selling the goods below our cost, when we confronted the CEO again he confessed that he had been doing this to generate cash, he almost broke down and started crying.
- We then proceeded to call some of the customers listed on invoices, clearly they were dumping product because the amount of the invoices were EU4M, EU2M, EU1.8M, etc. We talked to one or two customers who confirmed the orders and receipt of the goods.
- At this time the legal counsel and the CEO again told us that they had a silent shareholder that was about to increase his equity in GG and that we should wait, when I asked who this investor was, they hesitated to say but ultimately the legal counsel said it was Erich Kellerhals the founder of Media Markt, the largest retailer in Germany. We learned that he owned 4M share or about 25% of the company and that he also provided the company with EU17M in loans. The CEO didn't like the fact that the legal counsel told us the name, he was very concerned that his name might be leaked to the media.
- I was then asked to go into a small conference room with the CEO, their legal counsel alone so I asked Thomas from K&L to join me. Again they offered the letter admitting to the crime in return for a few weeks. At this time I told them that their time was up and that we were going to call the authorities.
- We proceeded to call the local police. After a few minutes the first two officers came and then they requested someone more senior.
- The police interviewed everyone in the boardroom and they determined that the stock hadn't just disappeared, but that it was sold. They requested copies of all the invoices and also copies of the video tapes from the warehouse

- Finally a more senior inspector came late in the evening and proceeded to do a report, we showed him the videos and photos. At this stage Thomas from K&L told me that the CEO of GG was changing his story and instead of admitting to the crime, he was telling the authorities that he didn't know what happened to the stock
- In between calls with Catherine, Kevin, Karen and Oscar we made the decision to inform our insurance broker so they could inform the insurance companies. I also participated in a call with Lisa from Gallagher, I explained what had happen and the actions that we were taking
- When the police finished their report we decided that there was not much more we could do there so we decided to leave their offices around 11pm on Friday

  
Arturo A. Osorio

President Global Operations

Brightstar Corporation

5, 607 Bourke Street, Melbourne VIC 3000

Australia

  
**I, HUGH JOHN PEARCE**  
**Notary Public**

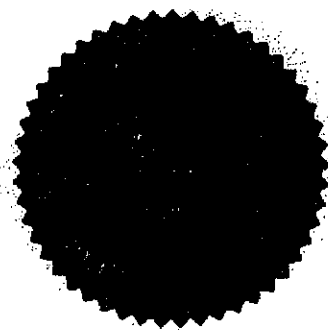
of Level 13, 200 Queen Street  
in the City of MELBOURNE  
in the State of VICTORIA

in the Commonwealth of AUSTRALIA  
**CERTIFY**

that I was present in Melbourne  
on this day and saw the signatory  
who provided satisfactory identification  
execute this document.

In witness of which I have subscribed  
my name and affixed my seal of office.  
My appointment is not limited by time.

28<sup>th</sup> November  
2013



**HUGH JOHN PEARCE**

NOTARY PUBLIC

Level 13, 200 Queen Street MELBOURNE  
3000, VICTORIA, AUSTRALIA

My appointment is not limited by time